

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA, *ex rel.*
GERALD POLUKOFF, M.D.

Plaintiff/Relator,

v.

ST. MARK'S HOSPITAL,
INTERMOUNTAIN HEALTHCARE, INC.,
INTERMOUNTAIN MEDICAL CENTER,
SHERMAN SORENSEN, M.D.,
SORENSEN CARDIOVASCULAR GROUP,

Defendants.

SCHEDULING ORDER

JURY TRIAL DEMANDED

Civil No.: 2:16-cv-00304-TS-EJF

Judge Ted Stewart

Magistrate Judge Evelyn J. Furse

Pursuant to Fed. R. Civ. P. 16(b), the court received the Attorney Planning Meeting Reports filed by counsel. Upon reviewing the filings and hearing argument, the Court sets the following schedule. The times and deadlines set forth herein may not be modified without the approval of the court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. | PRELIMINARY MATTERS | DATE |
|----|--|-----------------|
| a. | Date the Rule 26(f)(1) conference was held? | <u>12/12/18</u> |
| b. | Have the parties submitted the Attorney Planning Meeting Report? | <u>12/18/18</u> |
| c. | Deadline for 26(a)(1) initial disclosures? | <u>03/11/19</u> |
| d. | Defendants' Motion for Summary Judgment on Statute of Limitations Grounds— <i>failure to file a motion by this date will result in a waiver of the statute of limitation defense to the claims pled.</i> | <u>05/15/19</u> |
| e. | The Court limits discovery to PFO/ASD procedures performed on or after December 6, 2006, unless, Defendants do not file a Statute of Limitations Summary Judgement Motion by May 15, 2019, or the Court denies the Statute of Limitations Summary Judgement Motion. In either of those events, discovery can include PFO/ASD | |

procedures dating back to 2002.

2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum number of depositions by Plaintiff(s):	<u>210 hours</u>
b.	Maximum number of depositions by Defendant(s):	<u>210 hours</u>
c.	Maximum number of hours for each deposition (unless extended by agreement of parties):	<u>7</u>
d.	Maximum interrogatories by any party to any party:	<u>25</u>
e.	Maximum requests for admissions by any party to any party:	<u>1000</u>
f.	Maximum requests for production by any party to any party:	<u>50</u>
g.	The parties shall handle discovery of electronically stored information as follows:	
h.	The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: <i>Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).</i>	
i.	Last day to serve written discovery:	<u>03/27/20</u>
j.	Close of fact discovery:	<u>04/30/20</u>
k.	(optional) Final date for supplementation of disclosures and discovery under Rule 26(e):	<u>00/00/00</u>

- | | | |
|-----------|--|-------------------------|
| 3. | AMENDMENT OF PLEADINGS/ADDING PARTIES¹ | DATE |
| a. | Last day to file Motion to Amend Pleadings: | <u>09/30/19</u> |
| b. | Last day to file Motion to Add Parties: | <u>09/30/19</u> |
| 4. | RULE 26(a)(2) EXPERT DISCLOSURES & REPORTS | DATE |
| | Disclosures (identity of experts) & Reports on the Issue of Standard of Care/Medical Necessity of PFO/ASD Closures in the Medical Community | |
| a. | Party(ies) bearing burden of proof: | <u>06/28/19</u> |
| b. | Counter disclosures: | <u>07/26/19</u> |
| c. | Last day for expert discovery on this issue: | <u>09/27/19</u> |
| | Disclosures (subject and identity of experts) & Reports on all other topics: | |
| a. | Party(ies) bearing burden of proof: | <u>05/29/20</u> |
| b. | Counter reports: | <u>07/29/20</u> |
| c. | Last day for expert discovery on all other topics: | <u>09/29/20</u> |
| 5. | OTHER DEADLINES | DATE |
| a. | Deadline for filing dispositive or potentially dispositive motions and/or motions to exclude expert testimony on the issue of standard of care/medical necessity of PFO/ASD closures in the medical community: | <u>10/25/19</u> |
| b. | Deadline for filing all other dispositive or potentially dispositive motions: | <u>10/30/20</u> |
| c. | Deadline for filing all other partial or complete motions to exclude expert testimony that would not prove dispositive of the case: | <u>01/08/21</u> |
| 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE |
| a. | Likely to request referral to a magistrate judge for settlement conference: | <u>Yes/No</u> <i>No</i> |
| b. | Likely to request referral to court-annexed arbitration: | <u>Yes/No</u> <i>No</i> |
| c. | Likely to request referral to court-annexed mediation: | <u>Yes/No</u> <i>No</i> |
| d. | The parties will complete private mediation/arbitration by: | <u>04/24/19</u> |
| e. | Evaluate case for settlement/ADR on: | <u>00/00/00</u> |

¹ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

f. Settlement probability: Fair

7. TRIAL AND PREPARATION FOR TRIAL **TIME** **DATE**

a. Rule 26(a)(3) pretrial disclosures²

Plaintiff(s):

01/29/21

Defendant(s):

02/12/21

b. Objections to Rule 26(a)(3) disclosures
(if different than 14 days provided in Rule)

00/00/00

c. Special Attorney Conference³ on or before:

03/05/21

d. Settlement Conference⁴ on or before:

03/05/21

e. Final Pretrial Conference:

__:_.m. 03/15/21

f. Trial Length

Jury Trial

21 days

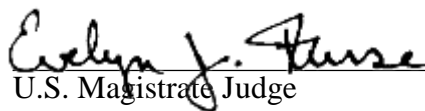
8:30 a.m. 04/05/21

8. OTHER MATTERS

Parties should fully brief all Motions in Limine well in advance of the pretrial conference.

Signed April 8, 2019.

BY THE COURT:


U.S. Magistrate Judge

² The Parties must disclose and exchange any demonstrative exhibits or animations with the 26(a)(3) disclosures.

³ The Special Attorneys Conference does not involve the court. During this conference, unless otherwise ordered by the court, counsel will agree, to the extent possible, on voir dire questions, jury instructions, and a pretrial order. They will discuss the presentation of the case, and they should schedule witnesses to avoid gaps and disruptions. The parties should mark exhibits in a way that does not result in duplication of documents. The pretrial order should include any special equipment or courtroom arrangement requirements.

⁴ The Settlement Conference does not involve the court unless the court enters a separate order. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.